

REMARKS/ARGUMENTS

Claims 1, 2, 4-10, 12-18, 20-26 and 28-30 are pending. Claims 8, 12-14, and 16 are cancelled without prejudice or disclaimer. New claims 31-35 are added. Claim 2 is amended.

Claims 2 and 4-6 are rejected under 35 U.S.C. §112, second paragraph. Claims 1, 2, 7, 9, 10, 15, 17, 18, 23, 25, and 26 are rejected under 35 U.S.C. §102(e) as being anticipated by Johnson, U.S. Patent Application No. US 2002/0138670 (hereinafter “Johnson”).

First, Applicants gratefully acknowledge the Office Action’s indication that claims 8, 12-14, 16, 20, 21, 22, 24 and 28-30 contain allowable subject matter. *See* Office Action dated 10/9/2007, paragraph 11. In this response, claims 8, 12, and 16 are rewritten in independent form as new claims 31, 32, and 35. Therefore, new claims 31-35 are allowable.

With regard to the Office Action’s §112 rejection of claims 2 and 4-6, Applicants submit claim 2 is amended to overcome the rejection. The rejection should be withdrawn.

Applicants respectfully submit nowhere in Johnson is the teaching or suggestion of a method of assigning thread priority comprising determining if there is an indication of approaching instruction side starvation for said first thread wherein instruction fetching for said first thread would be blocked due to processing one or more instructions from another thread (*e.g.*, as described in claim 1).

The Office Action asserts Johnson teaches the relevant limitations, citing Figure 4, elements 164 and 166. *See* Office Action dated 10/9/2007, paragraph 3. Applicants disagree.

The description of elements 164 and 166 of Figure 4 is as follows: "In such case, the device driver filter 8 determines (at block 164) whether there are any deferred I/Os pending in the low priority I/O queue 24. If not, then control ends as no consideration of any deferred low priority I/Os is necessary. Otherwise, if there are deferred low priority I/Os, then the device driver filter 8 determines (at block 166) whether the starvation counter 28 is at the maximum possible value."

The cited element block 164 describes determination of whether there are any deferred I/Os pending in a low priority queue, and if not, discontinuing consideration of low priority I/Os. Otherwise, at block 166, a device driver filter determines whether a starvation counter is at the maximum possible value.

Applicants submit the cited section fails to teach or suggest the relevant limitations, for at least the reason that it does not describe determining if there is an indication of approaching instruction side starvation for said first thread or blocking instruction fetching for said first thread due to processing one or more instructions from another thread. Indeed, the cited section does not describe instruction side starvation or blocking instruction fetching even generally.

The Office Action addresses the asserted inadequacies. *See* Office Action dated 10/9/2007, paragraph 10. First, Applicants note the Office Action's assertions are unsupported by the cited Johnson reference altogether. In order to support a proper §102

rejection, the Office Action must cite to an assertion or reasoning found in the cited reference. However, the Office Action's assertion are not unsupported by the reference, and therefore they are inadequate to support a proper §102 rejection. Moreover, even if they were adequate, the cited reference would still fail to teach or suggest the relevant limitations. Claim 1, for example, specifically and positively recites, among other things, an "indication" of approaching instruction side starvation for a first thread. However, the Office Action has failed to show at least any such indication, as readily understood by one of ordinary skill in the art. Applicants maintain the cited reference, including the cited sections discussed above, have failed to teach or described at least these limitations.

In order to be a proper 35 U.S.C. §102(e) rejection, the claimed limitations must be taught or disclosed in the cited reference. For at least the above reasons, the Office Action's citations are inadequate to support a proper §102(e) rejection of claim 1. Applicants submit claim 1 is allowable; independent claims 7, 9, 15, 17, 23 and 25 contain similar limitations, and therefore are allowable as well. Dependent claims 2, 4-6, 10, 18, 20-22, 24, 26 and 28-30 depend from allowable base claims and therefore should be allowed as well.

For at least all the above reasons, the Applicants respectfully submit that this application is in condition for allowance. A Notice of Allowance is earnestly solicited.

Serial No.: 09/888,273
Amendment dated March 10, 2008
Office Action dated October 9, 2007

The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss any matter concerning this application. The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. **11-0600**.

Respectfully submitted,
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Dated: March 10, 2008

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